

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2007- 0001

In the Matter of Petition for Reconsideration of

PACIFIC GAS & ELECTRIC COMPANY

Water Quality Certification of the Pit 3, 4, and 5 Hydroelectric Project

Federal Energy Regulatory Commission Project Number 233

SOURCE: Pit River

COUNTY: Shasta

ORDER GRANTING PETITION FOR RECONSIDERATION

BY THE BOARD:

1.0 INTRODUCTION

By this order, the State Water Resources Control Board (State Water Board or Board) grants Pacific Gas and Electric Company's (PG&E) petition for reconsideration of the water quality certification for the Pit 3, 4, and 5 Hydroelectric Project (Project), Federal Energy Regulatory Commission (FERC) Project Number 233.

2.0 FACTUAL, PROCEDURAL, AND LEGAL BACKGROUND

On December 21, 2005, the State Water Board circulated a draft of the water quality certification for the Project. In response to comments from the U.S. Forest Service (USFS), the State Water Board modified certain conditions to be consistent with the Federal Power Act section 4(e) conditions. On March 7, 2006, the State Water Board provided notice pursuant to section 3858, title 23 of the California Code of Regulations that it intended to take action on the water quality certification for the Project, and on August 8, 2006, the Board issued the water quality certification.

On September 7, 2006, PG&E filed a Petition for Reconsideration (Petition) on the water quality certification for the Project with the State Water Board. Pursuant to the California Code of Regulations, title 23, section 3867.1, parties had 20 days to file a response to the petition with the State Water Board. (Cal. Code Regs., tit 23, § 3867.1.) No responses were filed.¹

3.0 GROUND FOR RECONSIDERATION

Within 30 days of adoption of a decision made by the State Water Board's Executive Director on an application for water quality certification, any aggrieved person may petition the State Water Board for reconsideration of the decision. (Cal. Code Regs., tit. 23, § 3867, subd. (a).)

Petitions for reconsideration must contain the following:

1. Name, address, and telephone number of the petitioner;
2. The specific action of which petitioner requests reconsideration and a copy of the certification decision that is the subject of the petition;
3. The date on which the certification decision was made;
4. A statement of reasons why the certification decision was inappropriate or improper;
5. The manner in which petitioner is aggrieved;
6. The specific State Water Board action requested;
7. A list of persons known to have an interest in the subject matter;
8. A statement that the petition has been sent to the appropriate Regional Water Quality Control Board (Regional Water Board) or Executive Officer (if applicable) and to the applicant for water quality certification (if the petitioner and applicant are not the same);
9. A copy of a request to the Executive Director or appropriate Executive Officer for preparation of the administration record, if applicable and available; and
10. A summary of the petitioner's participation in the process leading to the certification decision.

(Cal. Code Regs., tit. 23, § 3867, subd. (c).)

¹ PG&E also requested a stay. Because this order takes final action on the petition for reconsideration, and FERC has not yet issued a new license incorporating the original certification, the request for stay is moot.

Section 3867.1 of the State Water Board's regulations requires the State Water Board or its Executive Director, as appropriate, to notify interested persons that they have 20 days from the date of mailing the notice to file any responses to the petition for reconsideration.

On reconsideration, the State Water Board may:

1. Refuse to reconsider the certification decision if the petition fails to raise substantial issues that are appropriate for reconsideration;
2. Deny the petition upon a finding that the certification decision was appropriate and proper;
3. Set aside or modify the decision, if possible, or take new appropriate action; or
4. Direct the Executive Director, Regional Water Board, or Executive Officer, as appropriate, to take appropriate action.

(Cal. Code Regs., tit. 23, § 3869, subd. (a).)

4.0 DISCUSSION

In its Petition for Reconsideration, PG&E raised issues regarding the timing of Implementation of Operation Conditions and Reservoir Level Operating Conditions 1-4. PG&E stated that implementation of the new minimum instream flows and reservoir level and operation protocols would be infeasible until modifications are made at the Pit 3, 4, and 5 dams. In 2000, Bechtel Corporation conducted a safety review of the sluice gates and concluded that unless there are instrumented tests of the gates, PG&E should be conservative when using the gates to meet the instream flows. Based on this report, PG&E indicated its intent to install a new valve to provide instream flows at Pit 3. PG&E asserted that design, permitting, and construction could take up to three years. The State Water Board placed a condition in the certification to allow up to three years to install the new valve, during which time PG&E would make a good faith effort to meet flow requirements to the extent possible.

PG&E did not identify any problems meeting the proposed flow regime at the Pit 4 or Pit 5 dams in the relicensing process; however, in its Petition, PG&E submitted an affidavit from its Operation Supervisor expressing safety concerns with using the current equipment to meet the flow requirements for Pit 4 and 5 contained in the certification. In its Petition, PG&E requests an additional three year grace period to install new equipment at Pit 4 and 5, during which time it

would make a good faith effort to meet the requirements within the capabilities of the existing equipment.

The Petition also identified unintended discrepancies between language in the collaborative agreement on comprehensive resource management actions between PG&E and resource agencies, agricultural water users, and non-governmental organizations, and the 4(e) conditions. On August 29, 2006, the USFS submitted revised 4(e) conditions to FERC. In its Petition, PG&E requests that the State Water Board correct certain typographical errors and other unintended discrepancies in the conditions to make them consistent with the revised USFS final 4(e) conditions. Changing certification conditions to reflect the revised 4(e) conditions will not result in any substantive changes but will clarify or correct methods required: a) to return natural spills occurring after June 15 to instream flow levels; and b) for the operation of Pit 4 dam following a spill.

In addition, the Petition noted that Mitigation Measure 8 establishes criteria that would be impossible to meet. Removal of this sentence will not result in any substantive changes, but will clarify the method of compliance with the measure.

5.0 CONCLUSIONS

PG&E has adequately supported concerns as to the safety of the project absent modification of the certification. No responses were filed in opposition to the Petition, and it appears that all parties are in agreement that the corrections of typographical errors and proposed modifications are necessary and proper.

The Water Board finds that these modifications to the certification are proper to address safety concerns and provide consistency with the 4(e) conditions.

ORDER

IT IS HEREBY ORDERED, that the Petition for Reconsideration of the Water Quality Certification for the Pit 3, 4, & 5 Hydroelectric Project is granted. The certification, including Attachment A, shall be reissued as attached.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on January 18, 2007.

AYE: Tam M. Doduc
Gary Wolff, P.E., Ph.D.
Arthur G. Baggett, Jr.
Charles R. Hoppin

NO: None

ABSENT: None

ABSTAIN: None



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Clerk to the Board